[IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 547 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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STATE OF GUJARAT & 1 - Appellant(s)
Versus
RAMIBEN WD/O.UKABHAI PATHUBHAITHAKOR & 4 - Defendant(s)

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Appearance :
GOVERNMENT PLEADER for Appellant(s) : 1 - 2.
MR VH DESAI for Defendant(s) : 1 - 2.
(MR SG SHAH) for Defendant(s) : 2 - 3.
NOTICE SERVED for Defendant(s) : 3 - 4.
MR PRAKASH K JANI for Defendant(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 18/07/2006

ORAL JUDGMENT

1. By way of this appeal the appellants have challenged the judgement and award dated 08.11.1985 passed by the Motor Accident Claims Tribunal (Aux.) Rajkot, in M.A.C.P. No. 147 of 1982 whereby the Tribunal awarded sum of Rs. 59,000/- with proportionate costs and running interest at the rate of six percent per annum by way of compensation to the original claimant.

2. The short facts of the case are that on 15.12.1980 at about 11.30 a.m. The deceased was engaged as a

labourer by the contractor who was doing the work of constructing Wankaner-Jadeshwar Road. When the deceased was working one road roller dashed the deceased, as a result he sustained serious injuries on various parts of his body and later on succumbed to the injuries. The legal heirs of the deceased have therefore filed the claim petition claiming Rs. 1,00,000/- by way of compensation for the death of the deceased. The Tribunal after hearing the parties passed the judgment and award which is under challenge in this appeal.

3. Learned advocate for the appellant has submitted that Tribunal erred in not appreciating that as per the definition of “motor vehicle” as defined by sub-section 18 of section 2 of the Act the road roller cannot be a motor vehicle and therefore no petition can be filed for compensation under the Motor Vehicle Act.

3.1 He further submitted that Tribunal erred in holding that the deceased was earning at least Rs. 400/- per month.

4. It is an admitted position that the road roller involved in the accident was of the ownership of the opponent Nos. 2 and 3. Admittedly, the work of

constructing Wankaner-Jadeshwar Road was kept by the opponent No. 4 when the road roller involved in the accident belonged to the opponent Nos. 2 and 3 and when the said road roller was driven by the opponent No. 1 during the course of employment of the opponent Nos. 2 and 3, the contractor and insurance company are not necessary parties in this claim. Therefore the Trial Court has correctly appreciated the facts of the case and arrived at a just conclusion. Learned Counsel for the appellant is not able to point out anything contrary to takes a different view of the matter.

5. In view of the above finding I am of the view that the Trial Court has not committed any error in passing the impugned order. I am in complete agreement with the reasoning adopted and the findings arrived at by the trial court. No case is made out to cause interference. Hence the appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*